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DPEIS - EFH Consultation Review




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MEMORANDUM FOR: John Diff
Damage Assessment and Restoration Program

FROM: F/SER4 – Rickey Ruebsamen 

SUBJECT: Louisiana Regional Restoration Planning Program, Draft
Programmatic Environmental Impact Statement (DPEIS) - EFH
Consultation Review

This is in response to your June 19, 2003, Essential Fish Habitat (EFH) consultation request for the Draft Programmatic Environmental Impact Statement (Draft PEIS) for the Louisiana Regional Restoration Planning Program (RPP). The RPP would assist natural resource trustees in carrying out their responsibilities in Natural Resource Damage Assessment cases in the state of Louisiana.

Your request indicates that the Draft PEIS analyzes alternatives to implement damage assessment and restoration planning on a programmatic level and, as such, each incident's Damage Assessment and Restoration Plan (DARP) will include an EFH assessment as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Based on the nature of the action analyzed in the Draft PEIS we concur with this approach as provided for in 50 CFR Section 600.920(j)(3). The following comments are provided to assist in your preparation of the Final PEIS and DARPs.

Various incomplete and incorrect descriptions, definitions and requirements of the Essential Fish Habitat provisions of the MSFCMA are scattered throughout the document (pages 12, 97, B-37, and Appendix C). In order to provide a complete and coherent representation of EFH provisions and requirements, we recommend that these be modified (as described below) and be moved to, and the reader referred to, Appendix C.

1. Page 12: The description of EFH on this page is confusing and implies that the EFH provisions do not apply nationwide. We recommend modifying the paragraph as follows:

Essential Fish Habitat - Essential Fish Habitat and Habitat Areas of Particular Concern (HAPC) are described and identified in amendments to address EFH requirements of the Fishery Management Plans (FMP) of the regional Fishery



Management Councils and approved by NOAA Fisheries. EFH and HAPC's (if any) within Louisiana and its coastal waters are designated in the generic FMP amendment of the Gulf of Mexico Fishery Management Council.

2. Page 97: The above identified request for EFH consultation was sent directly to our Habitat Conservation Division independently of the Endangered Species Act Section 7 Consultation purportedly sent to the National Marine Fisheries Service (NOAA Fisheries) as described on this page. This should be corrected. The EFH section should also describe the responsibility that Federal agencies have to consult with NOAA Fisheries regarding any of their actions proposed to be authorized, funded, or undertaken that may adversely affect EFH. Furthermore, this section should clearly state that each incident's DARP will include an EFH assessment as required by the MSFCMA.
3. Page B-37: The definition of the Exclusive Economic Zone (EEZ) as presented on this page implies that the seaward boundary of the EEZ is 200 miles beyond the 3- or 9-mile boundary of state territorial waters. We recommend that it be clarified that the outer extent of the EEZ is 200-miles from shore.
4. We recommend that the following (from 50 CFR Section 600.920(e)(3)) be provided in Appendix C as a guideline to the mandatory contents and recommended additional information for EFH assessments to assist in the preparation of DARPs:

Mandatory contents. The assessment must contain:

- (i) A description of the action,
- (ii) An analysis of the potential adverse effects of the action on EFH and the managed species,
- (iii) The Federal agency's conclusions regarding the effects of the action on EFH,
- (iv) Proposed mitigation, if applicable.

Additional information. If appropriate, the assessment should also include:

- (i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.
- (ii) The views of recognized experts on the habitat or species that may be affected.
- (iii) A review of pertinent literature and related information.
- (iv) An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.
- (v) Other relevant information.

5. Because Trustees consist of more than one Federal agency and non-Federal agencies, Appendix C should also reference the provisions (50 CFR Sections 600.920(b) and (c)) for designating a lead agency or non-Federal representative to conduct EFH consultation for individual DARPs.

Finally, it is important to note that adverse impacts to EFH may occur as a result of habitat restoration activities. The PEIS correctly states (page E-10) that implementation of habitat enhancement or restoration activities can result in adverse impacts to resources during and following construction. It is also important to recognize that restoration activities that result in the conversion of habitat types where both types are designated as EFH, results in a permanent/long-term adverse impact on EFH of the previous type. This would be the case even if the overall project is deemed as environmentally beneficial or preferred by the trustees. This dichotomy should be presented in the PEIS as guidance to prevent unnecessary delays resulting from incorrect or incomplete EFH assessments

If we can be of further assistance, please advise. Questions regarding these comments should be directed to Mr. David Dale at (727) 570-5736.